

Congress of the United States
Washington, DC 20510

November 25, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Office of the Administrator
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Consideration of Western Background Ozone Concentrations

Dear Administrator McCarthy:

We write to ask that you recognize the high ozone background levels in the intermountain West and their considerable contribution to the total ozone burden as the Agency moves forward with its current review of the national ambient air quality standards for ozone. On the basis of the final Ozone Policy Assessment (PA) recently released by the Agency, it appears that EPA staff are not granting this critically important issue the attention that it requires.¹

The final PA notes that the largest ozone background concentrations generally are found in the Intermountain West, and that there can be events where background concentrations reach or exceed 60-75 ppb. However, these events are described as "relatively infrequent" and capable of being addressed by EPA's Exceptional Events Rule (p. 2-31). To the contrary, current data indicate that a revised standard would frequently be exceeded in some portions of the intermountain West and that the Exceptional Events Rule is not an adequate tool for addressing this problem.

This issue was highlighted by EPA's Clean Air Scientific Advisory Committee (CASAC) in its letter to you on the prior draft of the PA. The Committee found that "background ozone . . . became an important issue in the CASAC deliberations as we listened to public comments that included information regarding high background levels in the intermountain Western United States."² The Committee also advised that "the

¹ EPA, "Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards" (August 2014).

² Letter from Dr. H. Christopher Frey, CASAC Chair, to Administrator McCarthy re: CASAC Review of the EPA's *Second Draft Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards*, pp. i-ii (June 26, 2014).

Second Draft PA is not clear as to how background estimates might impact the primary and secondary standards and whether these impacts may differ regionally.” Yet the conclusions in final PA do not appear to have been revised significantly in response to the CASAC concerns.

As CASAC recognized, background ozone is a substantial and growing concern in Utah and other areas in the Intermountain West. The CASAC letter (p. iv) notes that Zhang et al. (2011) found a significant increase in ozone background concentrations compared to prior work, particularly in the Intermountain West.³ The 2011 study found that values are typically 35-45 ppb in the East and on the West Coast but 50-60 ppb in the Intermountain West. As the CASAC letter also mentions, the study found that in this area, the background is higher than average when ozone exceeds 60 ppb. These findings led the authors to conclude:

If the NAAQS is lowered in the 60-70 ppbv range, areas of the intermountain West will have little or no ability to reach compliance through North American regulatory controls . . . Whereas previous GEOS-Chem studies found no occurrences of PRB [Policy Relevant Background] ozone exceeding 60 ppbv, we find here some occurrences in the intermountain West. The high PRB values in that region compared to the proposed revisions of the ozone NAAQS (60-70 ppbv) suggest that special consideration may be needed in the NAAQS-setting process.

Recent studies by the Utah Division of Air Quality (DAQ) have replicated and expanded upon these findings with respect to Utah and other western states. The studies demonstrate that portions of this area currently are exceeding the short-term primary standard of 75 ppb as a result of background levels, and many more would exceed a standard set at 70 ppb or lower. This was discussed in detail in testimony presented in 2013 to the House Environment Subcommittee by Amanda Smith, Executive Director of the Utah Department of Environmental Quality.⁴ As Ms. Smith stated:

Surprisingly high ozone values have been measured at rural monitors in Utah and even within National Parks. Similar high values have been seen throughout the Intermountain West. In Utah our work to date has focused on reductions in urban areas - successfully reducing peak ozone levels to meet more stringent standards. However, in rural Utah ozone values have not been decreasing, rather values have remained fairly constant despite these significant reductions in emissions of ozone precursors in Utah and upwind states.

³ Zhang et al., “Improved estimate of the policy-relevant background ozone in the United States using the GEOS-Chem global model with $\frac{1}{2} \times \frac{2}{3}$ horizontal resolution over North America,” *Atmospheric Environment* 45 (2011) 6769-6776.

⁴ Amanda Smith, Executive Director, Utah Department of Environmental Quality, Testimony before the Subcommittee on Environment of the Committee on Science, Space and Technology, “Issues regarding background ozone levels, consequences of a non-attainment designation and the interpretation and background of policy relevant background for ozone” (June 12, 2013). A copy of Ms. Smith’s highly detailed testimony is attached.

The attached DAQ study of recent ozone background trends in UT, CO, AZ, WY and ID demonstrates significant exceedance of 70 ppb, and often 75 ppb, in rural areas throughout these states.⁵ Several causes are listed for these results:

- Transport of ozone or precursors from Asia, especially during the spring. Asian impact is increasing by 0.63 ppb/yr.⁶
- Stratospheric ozone intrusion, especially at higher altitude sites. These intrusions can cause high ozone impacts when a weather front moves through an area. The impact is not limited to that short-term event - higher ozone occurs across a broad area for several days.
- Wildfires. Smoke can provide the precursor gases needed to form ozone.
- Altitude and topography. Ozone tends to increase with altitude.

A more detailed snapshot of ozone concentrations in rural areas near the Great Salt Lake is provided in the attached presentation on the results of special ozone studies conducted by the UT DAQ in 2010-2012.⁷ Twenty-seven sites were monitored in rural areas, near the Great Salt Lake and in nearby mountain valleys. The mountain valley sites showed 12 exceedances of 70 ppb, including 7 exceedances of 75 ppb. The Great Salt Lake zone had three sites exceeding 75 ppb on 28 different occasions. The rural sites had 4 exceedances of 70 ppb, with one exceeding 75 ppb. The causes to which these concentrations were attributed are similar to those discussed above, with the added point that the Great Salt Lake itself enhances ozone formation.

EPA's reliance in the final PA on the Exceptional Events Rule (EER) to deal with high ozone background "episodes" effectively condemns the intermountain West to "guilty until proven innocent" and incurs a high resource burden to meet the "but for" demonstration. The EER has not been effective to date in excluding background concentrations from determinations of NAAQS attainment. The application process is extremely complex and time consuming, and applications by Utah for EER exclusions have routinely been denied by EPA regional officials following years of work by state and industry staff. Ms. Smith discussed this issue in her House testimony:

⁵ Background Ozone, Presentation to Utah Air Quality Board July 3, 2013, Colleen Delaney, Utah Division of Air Quality.

⁶ Cooper et al., "Increasing springtime ozone mixing ratios in the free troposphere over western North America," *Nature* 463 (2010) 344-348.

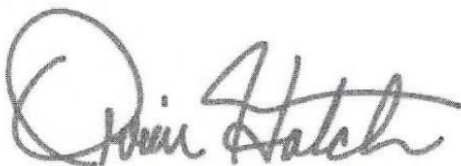
⁷ Utah Special Ozone Studies 2010-2012, Seth Arens, Air Monitoring Section.

Additionally, EPA must have a defined path forward on how attainment will be addressed through policies such as exceptional events, policy relevant background and rural transport area designation. Again these tools were designed for the east coast and currently are problematic and an ill fit for solving ozone in the rural Intermountain West. Specifically, the exceptional events policy has proven to be an impossibly high hurdle to meet and one that eats literally thousands of hours of critical staff time to develop each submission. Since 2008 Utah has submitted 12 exceptional event demonstrations for particulate matter, requiring about 4,000 hours of technical work, that have not been approved by Region 8. There were many other events, including ozone levels affected by western wildfires that we did not even attempt to demonstrate as exceptional events because the technical criteria were too difficult to meet. If the exceptional event process doesn't work for particulate matter - it certainly won't work for the complicated science behind rural background ozone. If EPA moves forward with a more stringent standard without workable measures to address background ozone, it will guarantee failure for Utah, leading to severe consequences for the state.

If the EPA does not have a defined and fair path forward on how attainment will be addressed through its policies prior to changing the NAAQS, especially for situations where background ozone not attributable to anthropogenic activity in Utah exceeds the NAAQS, this transfers an inordinate responsibility on the states to argue for attainment, and an unbalanced and unfair burden on intermountain western states compared to other states across the U.S. As discussed in the recent CASAC letter, "a 2002 court decision (*American Trucking Associations, Inc. v. EPA*, 283 F.3d at 379) allows the EPA to consider relative proximity to peak background levels when evaluating alternative standards . . ." The final PA reiterates this point and concludes: "The Administrator, when evaluating the range of possible standards that are supported by the scientific evidence, could consider proximity to background O₃ concentrations as one factor in selecting the appropriate standard" (p. 1-27).

For all of these reasons, I ask you and your staff to place a primary emphasis on ozone background levels in the intermountain West as the Agency moves forward with the ozone review, and to make it clear that background levels will be a significant consideration in determining whether and how to revise the standard.

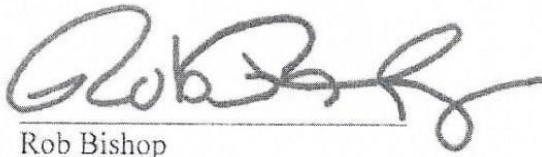
Sincerely,



Orrin Hatch
U.S. Senator



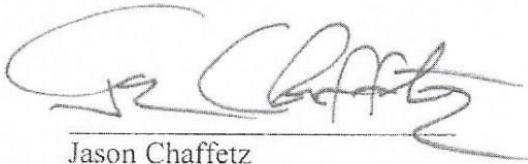
Mike Lee
U.S. Senator



Rob Bishop
Member of Congress



Chris Stewart
Member of Congress



Jason Chaffetz
Member of Congress

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Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

November 13, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

On December 1, 2014, you are scheduled to propose a rule to revise the existing National Ambient Air Quality Standards (NAAQS) for ground-level ozone. Although the Environmental Protection Agency has yet to release its own cost estimate, recent independent analysis suggests that the likely cost could be as high as \$270 billion per year,¹ making the rule by far the most costly regulation ever issued by EPA.

As the deadline approaches for EPA to propose this new rule, we write to request that the agency provide, in the information it supplies the public concerning this proposal, the significant and as yet unrealized costs of meeting the existing eight-hour 75 parts per billion (ppb) ozone standard, which was finalized in 2008.

EPA has estimated the costs of meeting the current standard would range from \$7.6 billion to \$8.8 billion (2006 dollars) in 2020² -- a price tag on par with the upper range of EPA's estimates for its recently proposed "Clean Power Plan" for existing power plants. Moreover, EPA indicated that the actual costs could be higher if EPA's assumptions regarding "aggressive technological change" are incorrect.³ Given that the agency decided to delay implementing the

¹ "Assessing Economic Impacts of a Stricter National Ambient Air Quality Standard for Ozone," NERA Economic Consulting, available at <http://www.nam.org/Issues/Energy-and-Environment/Ozone-Regulations/NERA-NAM-Ozone-Full-Report-20140726/>.

² EPA's July 2011 RIA, p. S1-4 available at http://www.epa.gov/ttn/ecas/regdata/RIAs/s1-supplemental_analysis_full.pdf.

³ *Id.* EPA explains on p. S-12: -- "The extrapolated costs and benefits will only be realized to the extent that unknown extrapolated controls are economically feasible and are implemented. Technological advances over time will tend to increase the economic feasibility of reducing emissions, and will tend to reduce the costs of reducing emissions. Our estimates of costs of attainment in 2020 assume a particular trajectory of aggressive technological

2008 standards for a number of years, it is not evident how much, if any, of the costs included in EPA's estimate for compliance with the current standard have been realized.

According to EPA's May 2012 designations, 232 counties spread over 26 states, two tribal areas, and the District of Columbia have yet to meet the 2008 standard despite continued mobile and stationary source reductions.⁴ Although EPA designated over 190 of these counties as "marginal" nonattainment with the expectation that they will meet the 75 ppb standard in 2015, EPA's 2010 to 2012 ozone data tells a different story – that many of these counties will fail to accomplish this goal.

In fact, EPA's data show that, despite a 14 percent reduction between 2009 and 2012 in NOx emissions (a precursor pollutant critical in the formation of ozone) from "all" mobile and stationary sources,⁵ ozone levels actually increased over this same time period. Although weather may have played a role, this increase persisted even after the Agency corrected for the effect of weather on ozone levels.⁶ This raises the concern that further NOx reductions may not be as effective as EPA predicts in lowering ozone levels.

Moreover, EPA's own analysis shows that 21 counties in four broad geographic regions (Houston, eastern Lake Michigan, the Northeast Corridor, and a large part of California) will not attain the 2008 standard of 75 ppb in 2020, even when assuming the imposition of all known controls with projected improvements in air quality.⁷ In other words, several major metropolitan areas may not attain the *current* standard in the *next decade*. For Houston, an area EPA classified in 2012 as "marginal" with three years to attain, EPA estimates that an additional NOx reduction of 69 percent beyond the known control scenario would be needed to bring the area into attainment.⁸ In California, local air quality control officials have independently estimated that they will have to cut NOx emissions by another 75 percent just to meet the existing ozone standard of 75 ppb by a 2032 deadline.⁹ If meeting the current standard is even attainable during this extended timeframe, its cost to the country will not be small.

In light of this situation, EPA's economic analysis should not assume the existing rule has been met and report only the incremental costs of the proposed new rule. While some may

change."

⁴ A table of EPA 2012 ozone designations can be found at:

<http://www.epa.gov/airquality/ozonepollution/designations/2008standards/final/finaldes.htm>.

⁵ EPA's National Emission Inventory (NEI) data for NOx can be found at: <http://www.epa.gov/ttnchie1/trends/>. According to EPA, NEI provides "a comprehensive and detailed estimate" of air emissions "from all air emissions sources." See <http://www.epa.gov/ttn/chief/net/2011inventory.html>.

⁶ Wells, Ben, EPA "Ozone 2013 Update" February 11, 2014 available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.epa.gov%2Fairnow%2F2014conference%2FForecasting%2FTuesday%2FWells-NAQC-Presentation-FINAL-020614v2.pptx&ei=crZbVI_5JKbgsASQ-YKYBw&usq=AFQjCNFVNiVtYCIki4Vq6Fs7NmBpgghLpQ&bvm=bv.79184187,bs.1,d.cGE.

⁷ EPA's 2008 RIA, p 4-1 available at http://www.epa.gov/ttn/ecas/regdata/RIAs/452_R_08_003.pdf.

⁸ *Id.* at p. 4-7.

⁹ L.A. Times, "EPA staff recommend significantly lower ozone standard" August 29, 2014, <http://www.latimes.com/science/la-me-ozone-20140830-story.html>.

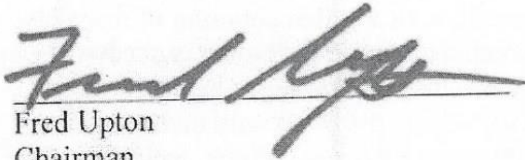
find it convenient to focus only on the costs of meeting the new proposal, the American people will surely feel the costs of meeting both the new and existing standards.

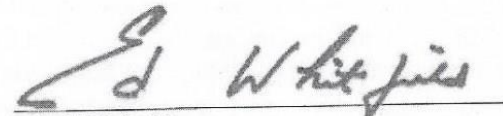
Given the enormous costs and implications of this rulemaking for our nation's future economic growth, EPA has an obligation to provide the public with a full accounting of the costs of meeting the proposed standard, including the as yet unrealized cost of the controls needed to meet the existing ozone standard. For purposes of complete transparency, the analysis for both the existing and new ozone standard should fully and clearly report the costs with and without any potential emission reductions and costs associated with other EPA regulations, including EPA's proposed Carbon Pollution Standards for new and existing electric generating units and any mobile source NOx reductions that may result from the corporate average fuel economy standards for Model Year 2022 to 2025 that are dependent on the outcome of the midterm review. Finally, your proposal should answer the following questions:

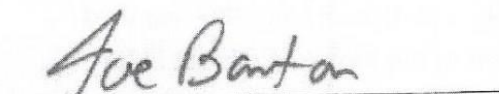
- What is EPA's estimate of the cost to date to comply with the current 2008 standard?
- What is EPA's current estimate of the remaining cost of attaining the current 2008 standard?
- How many of the 190 counties that EPA classified as marginal nonattainment in 2012 will attain the standard by 2015? How many will likely fail?
- How many existing nonattainment areas will be required to rely on "extrapolated" or "unknown" control costs to meet the current standard? What portion of their total costs will come from these unknown controls?
- What will happen to these areas if they cannot identify control technologies to meet the substantial NOx reductions?
- Why did ozone levels adjusted for weather not fall between 2009 and 2012 even though EPA's National Emissions Inventory base shows significant NOx reductions over this same time period?


We appreciate your attention to this matter and look forward to examining the quality of the information in your proposal when it is issued.

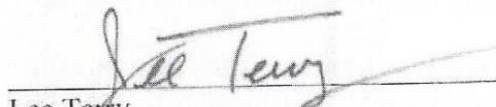
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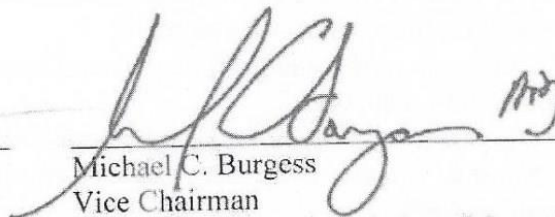

Fred Upton
Chairman

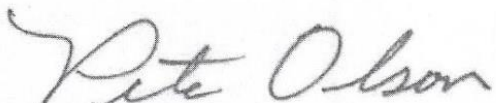

Ed Whitfield
Chairman
Subcommittee on Energy and Power

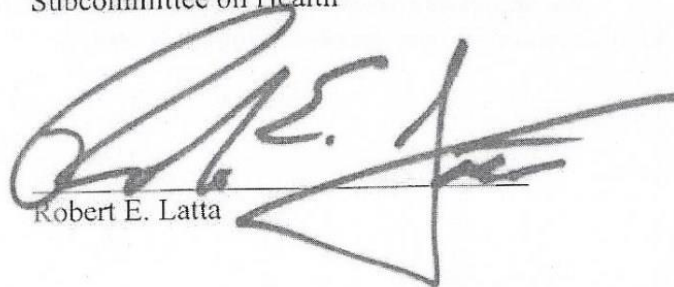

Joe Barton
Chairman Emeritus

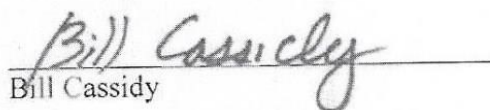

John Shimkus
Chairman
Subcommittee on Environment and the Economy

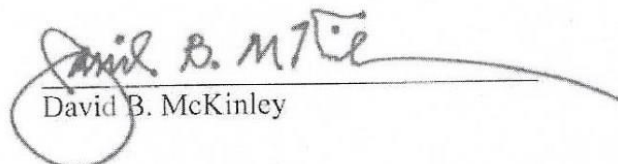

Lee Terry
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

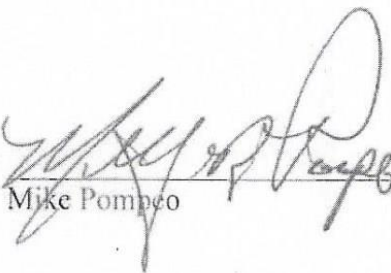

Michael C. Burgess
Vice Chairman
Subcommittee on Oversight and Investigations
Subcommittee on Health


Pete Olson


Robert E. Latta


Bill Cassidy


David B. McKinley


Mike Pompeo
H. Morgan Griffith

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby Rush, Ranking Member
Subcommittee on Energy and Power

The Honorable Howard Shelanski, Administrator
Office of Information and Regulatory Affairs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 23 2015

OFFICE OF
AIR AND RADIATION

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of November 13, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy, inquiring about the cost associated with bringing areas into attainment with the 2008 ozone National Ambient Air Quality Standards (NAAQS). The Administrator asked that I respond on her behalf.

At the time the 2008 NAAQS ozone standard was set, we estimated both the costs and benefits of implementation, in accordance with guidance from the Office of Management and Budget. In your letter, you accurately cited the anticipated costs of implementing the 2008 ozone NAAQS in the year 2020. I should also note that there are significant annual benefits associated with implementation of the 2008 ozone NAAQS that are estimated to range between \$2 billion and \$17 billion per year.¹ These benefits include 260 to 2,300 avoided premature mortalities per year, many fewer cases of acute bronchitis, many fewer cases of aggravated asthma, and large reductions in the number of days when people miss work or school (243,000 days) and when people must restrict their activities (750,000 days) because of ozone-related illnesses.

As you note, EPA designated areas where air quality does not meet the 2008 ozone health standard of 75 ppb in May 2012. The large majority of those areas were designated as "marginal" nonattainment, because air quality did not exceed 75 ppb by a substantial amount. Once air monitoring data for 2014 are certified by the states, submitted to and reviewed by EPA, which is expected by early summer, we will be able to determine which marginal areas are on track to meet the 2015 attainment date. For any areas not on track, EPA will work with those areas to assess whether an extension might be warranted, as provided in the Clean Air Act, or what other steps should be taken to continue to improve air quality in those areas. I will note that 2012 was a high year for ozone formation in several parts of the country due to high temperatures and drought or drought-like conditions. Ozone levels in 2013 were generally lower, and preliminary data suggest that they were in 2014 as well.

¹ See "Final Ozone NAAQS Regulatory Impact Analysis," March 2008, available at: http://www.epa.gov/ttn/ecas/regdata/RIAs/452_R_08_003.pdf.

States with areas designated as moderate nonattainment are working now on their clean air plans, due in July 2015. Plans for serious and above areas are due in July 2016. Those plans will describe the measures states have determined are appropriate. Until that information is available, EPA cannot provide any further cost estimates or opine on what the state plans may or may not include.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at mackay.cheryl@epa.gov or (202) 564-2023.

Sincerely,

A handwritten signature in dark ink, appearing to read "Janet G. McCabe", with a stylized flourish at the end.

Janet G. McCabe
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 19 2014

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Harold Rogers
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the July 2014 Government Accountability Office report entitled, *EPA Should Improve Adherence to Guidance for Selected Elements of Regulatory Impact Analyses* (GAO-14-519). The EPA prepared this response pursuant to 31 U.S.C. 720.

The EPA generally agrees with the GAO's recommendations and is committed to continual improvement in the clarity of its regulatory impact analyses. However, the agency does not believe that the handful of issues identified by the GAO in its report indicate any systemic deficiencies with respect to the accuracy of the EPA's analytical work. We wish to highlight a number of areas in which we believe the report's findings and conclusions are incomplete or would benefit from a clearer and more robust consideration of context and then provide the agency's response to the GAO's recommendations.

Consistent with Executive Order 12866, the EPA develops regulatory impact analyses for all of its economically significant regulations. The RIAs are reviewed by the Office of Management and Budget, undergo an interagency review, and are then released for public notice and comment along with the proposed rulemaking before being revised for the final rule. The agency relies on the best available information to calculate both the costs and the benefits of our rules, and uses the public comment process to further refine that work. Other economists have observed that the "RIAs conducted by the EPA consistently rank at or near the top of the 17 agencies considered for all three categories of openness, analysis, and use." (See "Reflections on the Conduct and Use of Regulatory Impact Analysis at the U.S. Environmental Protection Agency", <http://www.rff.org/RFF/Documents/RFF-DP-11-17.pdf>, p.5, April 2011.) That said, the agency constantly strives to improve both the quality and the transparency of its RIAs and looks forward to building upon the GAO's feedback to further improve its work.

In its examination of a very small subset (seven) of the RIAs for the rules which the EPA has issued in recent years, the GAO found that the EPA generally adhered to OMB Circular A-4. As this was such a small sample, the GAO recognizes that the results "cannot be generalized" to the EPA's economic analyses overall. Nevertheless, the report identifies several areas, particularly the RIA executive summaries, where in the GAO's view the EPA could have been clearer, or could have achieved greater

consistency among the RIAs, or where information made available in other parts of the rulemaking package could have been more clearly reflected in the RIAs.

As a general matter, the EPA believes it is important to understand and acknowledge the real-world context in which the RIAs are conducted. Circular A-4 itself accepts that the RIAs must balance "thoroughness and practical limits of analytical capacity." Therefore, Circular A-4 affords agencies some flexibility to design analyses in ways that optimize use of limited resources while providing appropriate information about policy options. As a result, the EPA may also choose not to monetize an effect if to do so would require significant additional analytical resources but the relevant effect would likely be negligible relative to the other benefits categories that were monetized. In addition, scientific and economic methods do not yet provide all the answers needed to monetize all costs and benefits even in the face of unlimited resources.

Further, the EPA believes that certain of the GAO's findings and conclusions are incomplete or would benefit from a more robust explanation of context. We note three areas in particular.

First, the GAO's report suggests that the agency's use of the discount rates in the interagency technical support document for the social cost of carbon raised questions about the agency's adherence to Circular A-4 and about the consistency of analysis in certain RIAs. As the GAO notes, however, the OMB and the Council of Economic Advisers convened an interagency group to develop the technical support document in order to extend the guidance in Circular A-4 by developing a way for agencies to incorporate the social benefits of reducing greenhouse gases into the benefit-cost analysis of regulatory actions. Further, as the GAO also acknowledges, the OMB has explained that it regards the discount rates in the social cost of carbon technical support document as consistent with Circular A-4 and the available economic literature.

Second, the GAO's report concludes that failure to monetize some benefits in certain RIAs makes it more difficult for the public to fully understand economic trade-offs. The EPA agrees that there are challenges in completely monetizing both benefits and costs; in particular, the EPA is often unable to quantify or monetize all of the public health and environmental benefits of its regulations, including some potentially important effects. However, the report does not fully identify that (1) this is a broad problem in benefit-cost analysis which is not unique to the EPA; (2) the EPA puts significant effort into clearly indicating benefit categories for which the agency is unable to monetize benefits; (3) when it is not possible to monetize all impacts, qualitative analysis of non-monetized impacts provides the best available information to communicate to the public.

Third, the EPA believes it important to clarify certain points raised by the GAO with regard to the agency's analysis of employment impacts. In recent years, the EPA has significantly increased the amount of employment analysis in its RIAs. The EPA does not use the same approach for employment analysis for every rule; as with other analyses in our RIAs, each employment analysis is tailored to the specifics of that regulation and reflects the degree to which reliable tools and data are available to quantify impacts. Employment analysis poses broadly recognized analytical challenges, and when conducting such analysis the EPA consistently uses the best tools and data available for the relevant rulemaking. In some cases, the EPA focuses on a qualitative discussion of the employment impacts – both positive and negative – and in other cases, it quantifies selected employment impacts. As the GAO recognizes, the agency strives in all instances to transparently describe the strengths and weaknesses of the approach chosen by the agency. The EPA believes that these analyses, whether qualitative or quantitative, provide decision-makers and the public with the most reliable information available on the employment impacts of its rules and has worked hard to refine these analyses over time.

The GAO's discussion of employment impact analysis focuses on one particular study that the EPA used to quantify employment effects in two of the seven rules reviewed by the GAO. It is important to recognize that this study represented the best available peer-reviewed research at the time these RIAs were conducted, and the EPA's treatment transparently recognized the limitations of the study where it was applied. The EPA recognizes that there are limited tools provided in the peer-reviewed economics literature to quantify the small shifts in employment that might be attributable to environmental regulation. The EPA is already engaged with the academic community to seek better tools in this area and will be discussed in one of the agency responses below.

GAO Recommendations:

To improve future adherence to OMB guidance for conducting RIAs, the EPA Administrator should take the following two actions:

- enhance the agency's review process for RIAs to ensure the transparency and clarity of information presented for selected elements in and across RIAs; and
- improve the accuracy, transparency, and clarity of the information included in the executive summaries of each RIA.

EPA Response:

As noted above, the EPA stands behind the quality of RIAs that we conduct and believes the GAO findings do not point to systemic deficiencies with respect to the accuracy of our analytical work. That said, the agency supports the GAO's emphasis on the importance of transparency and clarity and will continue to strive to enhance these qualities in our RIAs. The EPA's Office of Policy, and particularly its National Center for Environmental Economics, will continue to work within the agency's existing (regulatory) Action Development Process to promote transparency and clarity in the RIAs. The EPA's December 2010 *Guidelines for Preparing Economic Analyses* describe principles for presenting the results of economic analyses, with a particular emphasis on a thorough and transparent presentation of benefits and costs, including effective presentation of effects that cannot be quantified and/or put into dollar terms. The EPA's Office of Policy, which manages the Action Development Process, will issue a memo to program offices reaffirming the importance of transparency and clarity in the RIAs, particularly the executive summary, and will work to incorporate greater emphasis of these points in the economic analysis component of the agency's (internal) Action Development Training that it conducts twice yearly.

Recommendation:

To enhance the usefulness of EPA's RIAs, the EPA Administrator should identify and prioritize for research key categories of benefits and costs that the agency cannot currently monetize that, once monetized, would most enhance the agency's ability to consider economic trade-offs associated with different regulatory alternatives.

EPA Response:

The EPA agrees with the importance of making continual improvements in valuing the benefits and costs of our regulatory actions and is constantly working to improve in these areas. The social cost of carbon represents an excellent example of a benefit that was unquantified prior to 2008, but is now included in the EPA's RIAs. The agency is currently working in other important areas of economic

valuation as well. For example, the EPA is in a long-term process of examining the factors that affect the estimated costs of regulations in a retrospective study of the costs of the agency's regulations. This could help to identify systemic differences between *ex post* and *ex ante* compliance cost estimation and, ultimately, allow for improvements in the way cost analyses are done. The agency is also in the process of seeking input from an independent expert Science Advisory Board panel on modeling economywide impacts. The EPA will continue to invest in areas that will support improvements in our ability to quantify important benefits and costs, including areas identified by the GAO such as water quality benefits and hazardous chemical impacts.

Recommendation:


In addition, to enhance the usefulness of EPA's RIAs, the EPA Administrator should continue efforts to update and improve the agency's approach to estimating employment effects.

EPA Response:

While the EPA considers our current practices to be up to date and consistent with sound science and economics, the EPA continues to explore the relevant theoretical and empirical literature and to seek public comments on analysis of economically-significant regulations in order to ensure that the way the agency characterizes the employment effects of its regulations is valid and informative. In October 2012, the agency convened a scientific workshop with academic experts to examine the theory and methods for understanding employment effects of environmental regulation. The agency is in the process of updating its *Guidelines for Preparing Economic Analyses* to include a revised employment impacts section. Recent RIAs, including the proposed *Residential Wood Heaters New Source Performance Standard* in January 2014 and the final Tier 3 Vehicle Emission and Fuel Standards in March 2014, have used some of the updated literature review, description of theoretic models, and empirical methods for employment impact analyses that will be incorporated into the guidelines update. Finally, the EPA Science Advisory Board panel examining modeling economywide impacts will include discussion of approaches to capture employment effects.

In closing, the EPA wishes to reiterate that the agency generally agrees with the GAO's recommendations and is committed to continual improvement in the clarity of its regulatory impact analyses, while standing by the quality of its RIAs. If you have any further questions, please contact me or your staff may contact Christina Moody in the EPA's Office of Congressional and Intergovernmental Relations, by phone at (202) 564-0260, or by email at moody.christina@epa.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Bloom', followed by a horizontal line extending to the right.

David A. Bloom
Acting Chief Financial Officer

AL-15-000-1714

RON WYDEN
OREGON

223 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5244
(202) 224-1280 (TDD)

United States Senate
WASHINGTON, DC 20510-3703

COMMITTEES:

COMMITTEE ON THE BUDGET
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
SPECIAL COMMITTEE ON AGING
SELECT COMMITTEE ON INTELLIGENCE
COMMITTEE ON FINANCE

November 3, 2014


Laura Vaught
Associate Administrator for Congressional
and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Ms. Vaught:

Enclosed please find correspondence I received from a constituent. He reached out to your office about an issue he is having with a proposed emission standards rule change.

I would greatly appreciate your addressing my constituent's concerns and responding directly to him. Please also send a copy to my Washington D.C. office, attention Malcolm McGeary, as I am interested in your response. Thank you in advance for your assistance.

Sincerely,


Ron Wyden
United States Senator

1220 SW 3RD AVE
SUITE 585
PORTLAND, OR 97204
(503) 326-7525

405 EAST 8TH AVE
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SUITE 285
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(503) 589-4555

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Steinert, John
11785 SE Highway 212
Suite 305
Clackamas, OR 97015
Clackamas County

Phone: 503 819 1601
Email: jsteinert@dirigolab.com

Web Mail Subject: Environment (Clean Air, Clean Water, Waste)

My name is John Steinert and I am the president of Dirigo Laboratories, Inc. of Clackamas, OR. We are a EPA accredited test laboratory that tests residential wood fired appliances (wood stoves, etc) to EPA established emissions standards. We are one of a handful of laboratories in the WORLD that specialize in this kind of testing and 3 of them are located in Oregon. We test wood stoves, pellet stoves, fireplaces, and boilers from all over the world ensuring that they meet the EPA's strict standards for particulate emissions levels. For the past 4 years, we have been working very closely with the EPA to update the current regulations and test methods that are outdated and were in need of reform. Finally, after 4 years EPA has put forth their proposal (see below for the title) and have effectively thrown the small laboratories under the bus. There are too many aspects of EPA's proposed rule changes to mention here but we could potentially be forced out of being an EPA laboratory. We find this to be unconscionable being that we have spent the last 4 years working with them, providing them with data driven test results and acting in good faith.

This proposal is not yet currently available for public comment and we feel it is absolutely critical that we act before it goes out to public comment. The proposals in this document will stop our business dead in its tracks for over a year. We are a small business that needs a voice and we need one quickly. Thank you for your consideration and I look forward to discussing this further.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2009-0734; FRL-9904-05-OAR]

RIN 2060-AP93

Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters

Kind Regards,
John Steinert, President
Dirigo Laboratories, Inc.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF THE REGIONAL
ADMINISTRATOR

NOV 25 2014

Mr. John Steinert
President
Dirigo Laboratories
11785 SE Highway 212, Suite 305
Clackamas, Oregon 97015

Dear Mr. Steinert:

Thank you for your letter to Senator Ron Wyden of Oregon regarding the status of the EPA's proposed standards for Residential Wood Heaters. Senator Wyden forwarded your letter to Laura Vaught, Associate Administrator for Congressional and Intergovernmental Relations, at the United States Environmental Protection Agency. We appreciate you taking the time to express your concern about the proposed standards for Residential Wood Heaters. Associate Administrator Vaught has asked that I respond to you on her behalf.

In your letter, you ask about the status of the proposed New Source Performance Standard for Residential Wood Heaters, and you state your strong concern about the potential impact of the proposed rule on small-accredited laboratories that test residential wood fired appliances for the EPA's established emission standards. As you know, on January 3, 2014, the EPA proposed updates to the New Source Performance Standards for Residential Wood Heaters. The public comment period closed on May 5, 2014, and we appreciate that you took the time to comment formally on the proposed rule through that process. The EPA is currently reviewing all the comments received during that time, and we expect to finalize the rule by February 3, 2015.

Again, thank you for contacting the EPA. If you have any questions, please feel free to contact me or Lucy Edmondson, who is our regional contact for Residential Wood Heater issues. You can reach Lucy by phone at (360) 753-9082 or by Email at edmondson.lucy@epa.gov.

Sincerely,

A handwritten signature in dark ink, which appears to read "Dennis J. McLerran", is written over a horizontal line.

Dennis J. McLerran *for*
Regional Administrator

cc: Mr. Malcolm McGeary
Office of Senator Ron Wyden

AL 15-000-2681

RON WYDEN
OREGON

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United States Senate
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SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
SPECIAL COMMITTEE ON AGING
SELECT COMMITTEE ON INTELLIGENCE
COMMITTEE ON FINANCE

November 19, 2014

Laura Vaught
Associate Administrator for Congressional
and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Ms. Vaught:

Enclosed please find correspondence I received from a constituent. She reached out to your office about an issue she is having with the EPA's proposed wage garnishment rule.

I would greatly appreciate your addressing my constituent's concerns and responding directly to her. Please also send a copy to my Washington D.C. office, attention Malcolm McGeary, as I am interested in your response. Thank you in advance for your assistance.

Sincerely,

Ron Wyden

Ron Wyden
United States Senator

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Constituent

exempt b
exempt b
exempt b

exempt b

Web Mail Message

Web Mail Subject: Environment (Clean Air, Clean Water, Waste)

Dear Senator Ron Wyden,

Dear Senator Wyden,

I wish to express my opposition to EPA Direct Final Rule Garnishment FRL 9910 14 OFCO: Administrative Wage Garnishment by EPA Note: This Final Rule will go into effect on September 2, 2014 unless adverse comments are received by August 1st. (See end of article)

In regard to the EPA proposed regulation to garnish wages without first obtaining a court order, I strongly oppose this blatant constitutional overreach by the agency and register my clear adverse position to it. I further request that the EPA withdraw its direct final rule from consideration now and forever.

This latest attempt exacerbates the already intolerable expansion of the EPA's regulatory abuses against individual Americans. It would give them unrestrained ability to not only arbitrarily make unfounded regulations, impose unwarranted penalties and fines, but then garnish the wages of the victim citizen rendering them unable to stand up to this oppression, and seek justice in a court of law. This is not tolerable!

No unelected bureaucracy should ever have this much unrestricted power to unleash on the citizens of this country as they so choose without due process.

Examples of excessive fines and abuse of power abounds in the EPA:

1. A West Virginia farmer, *exempt b* was threatened with fines of up to \$37,500 per day because storm water which flowed across her property and into a "water of the United States" had come into contact with dust, feathers, and small amounts of manure located on the ground.
2. *exempt b* of Wyoming was threatened with fines of as much as \$187,500.00 per day for building a pond on his private property.
3. In 2005, the *exempt b* of northern Idaho had all the required local building permits for their new home on a .63 acre lot in an already developed subdivision. Federal officials suddenly demanded that they stop construction. The Agency claimed that the small lot was a "wetland," and was protected under the Clean Water Act. They were ordered to "put the land back the way it was, removing fill and replanting the vegetation they had cleared." The EPA required them to submit annual reports about the condition of the lot, and threatened to fine them \$32,500 a day until they complied.

"Each year the EPA issues up to 3,000 "administrative compliance orders" to businesses and individuals, demanding an end to alleged environmental violations and applying enough pressure that those who are accused typically give in before the agency has to justify the action before a judge."

Individuals and businesses are not their only targets. The EPA continues to wield its heavy hand against cities and other local government entities. A prime example of this is the excessive requirements imposed on city wastewater plants—Vacaville and Dixon for starters.

These requirements are "even by the EPA's own admission, not scientifically proven—they are at best, a guess." And by the way, the cost of meeting these unscientifically estimated requirements is to be of "NO Consideration." To put it plainly, it doesn't matter what it costs the taxpayer, "just do it, and send them the

bill." Again, cities are faced with daily fines of staggering proportions if they don't comply.

Is this your idea of AMERICA, or is this the Chicago way? None of these bureaucrats are elected officials.
"Welfare for the masses is the alibi of tyrants" - Albert Camus.

Sincerely,

exempt b



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN - 5 2015

OFFICE OF THE
CHIEF FINANCIAL OFFICER


The Honorable Ron Wyden
Attention: Malcolm McGeary
United States Senate
Washington, DC 20510

Dear Senator Wyden:

Thank you for your letter of November 19, 2014, to the U.S. Environmental Protection Agency's Office of Congressional and Intergovernmental Relations. I appreciate this opportunity to clarify for your constituent, *except* the EPA's direct final rule, "Administrative Wage Garnishment," which the EPA published in the Federal Register on July 2, 2014, at 79 FR 37644. Enclosed is a copy of our response sent to your constituent.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact James Blizzard in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1695.

Sincerely,


David A. Bloom
Acting Chief Financial Officer

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN -5 2015

OFFICE OF THE
CHIEF FINANCIAL OFFICER

Exempt b
Exempt b

Exempt b

Thank you for your web mail message to Senator Ron Wyden expressing your opposition to the U.S. Environmental Protection Agency's direct final rule, "Administrative Wage Garnishment" which the EPA published in the Federal Register on July 2, 2014, at 79 FR 37644. I appreciate this opportunity to clarify for you the EPA's direct final rule. The Federal Register notice advised the public that the direct final rule would be withdrawn if the EPA received adverse comments. The EPA withdrew the direct final rule on July 17, 2014, at 79 FR 41646, after receiving adverse comments. The EPA's proposed rule to use administrative wage garnishment as a debt collection tool however, remained open. On July 23, 2014, the EPA extended the comment period, which closed on September 2, 2014, to provide additional time for public comment to the agency. Currently, the EPA is reviewing and considering comments received. Responses to comments received during the public comment period will be published when the proposed rule becomes final.

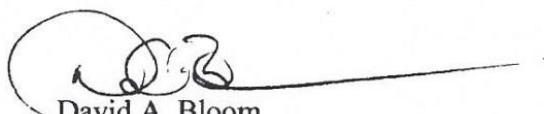
The Debt Collection Improvement Act of 1996 (Public Law 104-134) gives federal agencies the authority to collect delinquent non-tax debt owed by individuals to the United States through administrative wage garnishment without first obtaining a court order after debtors have been afforded appropriate due process rights, such as the right to request an administrative pre-wage garnishment hearing. Currently, at least 30 federal agencies use such wage garnishment to collect non-tax delinquent federal debt. We are unaware of any successful constitutional due process challenges to the Debt Collection Improvement Act of 1996. In addition, administrative wage garnishment is a collection tool authorized by Congress and the proposed rule does not give the EPA new authorization or put into place new authorities.

The EPA will begin to use administrative wage garnishment as a debt collection tool when the proposed rule becomes final and following negotiations with the Department of Treasury on a memorandum of understanding, as the EPA has chosen for the Department of Treasury to conduct any administrative wage garnishment hearings on the EPA's behalf. When the EPA begins using administrative wage garnishment, the Department of Treasury will send a wage garnishment notice to the debtor. A debtor may request a hearing from the Department of Treasury concerning the existence or amount of the debt, or the terms of the proposed repayment schedule under the administrative wage garnishment order.

Administrative wage garnishment is only one of a suite of debt collection tools used by federal agencies to collect delinquent non-tax debt. Our proposed rule will make available this tool to the EPA, so the EPA can join with other federal agencies in ensuring that non-tax delinquent debts are recovered for appropriate public use.

Again, thank you for your web mail message.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by 'A. Bloom' and a long horizontal line extending to the right.

David A. Bloom
Acting Chief Financial Officer

Congress of the United States
Washington, DC 20515

November 19, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington DC 20460

RE: The EPA's proposed New Source Performance Standards for warm air furnaces

Dear Administrator McCarthy:

In reviewing the proposed New Source Performance Standards (NSPS) for warm air furnaces, we found that the proposal departs from prior regulations for similar sources under Section 111(b) of the Clean Air Act (CAA), and the timeline for compliance threatens unreasonable economic damage to furnace manufacturers in the United States.¹ The proposed rule, which under the provisions of the CAA must be finalized by EPA by February 3, 2015, would prohibit the manufacture or sale of any warm air furnace that is not certified by EPA within 60 days of the final rule's publication in the Federal Register.² That timeline is impossible to achieve without undue harm to market participants. We ask EPA to ensure the compliance timeline for warm air furnaces is at least one year in length.

Prior to this proposal, EPA has never required emissions controls on warm air furnaces, and manufacturers will now be required to modify and submit their models to costly tests prior to certification. Mandating only 60 days to complete the necessary research and development, testing, and retooling of their manufacturing operations is beyond the capacity of many manufacturers. Additionally, EPA's Office of Enforcement and Compliance Assurance (OECA) has informed industry that certification may be unavailable until the 60-day period has expired, and the certification and testing process for manufacturers is further complicated by EPA's drive to transition from crib to cordwood testing, a development that significantly complicates the testing process for these manufacturers. This situation leaves manufacturers no choice but to cease production during the period between the rule's finalization and availability of EPA certification.

Many of the warm air furnace models manufactured are sold to retail home-improvement and hardware stores, which purchase stock several months in advance. Because of their purchasing decision timeline, these stores will now be stuck with non-certified inventory, and

¹ 79 Fed Reg 6330 (February 3, 2014).



² 42 U.S.C. § 7411(b)(1)(B).


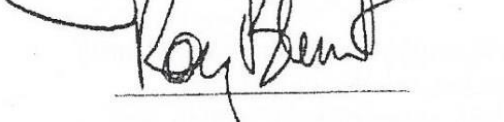
under the proposed rule, it appears they will be prevented from selling it. Because the content of the final rule remains in flux, inventory stocked for sale throughout 2015 may have to be repurchased by manufacturers at the same time that they are undertaking costly research and development, testing, and certification work.


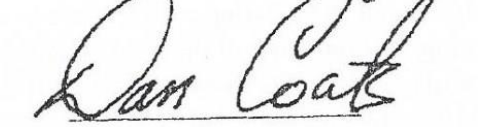
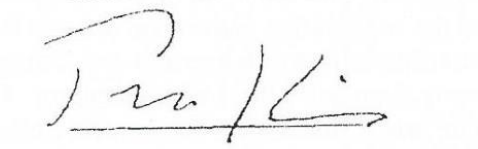

The "standards of performance" described in Section 111 of the CAA require a consideration of the cost of achieving the associated emission reductions. In this instance, the 60-day timeline for compliance exacerbates the cost. The financial burden that the proposed rule threatens to place on warm air furnace manufacturers – in the form of uncertain certification resulting in production halts as well as manufacturers having to buy back furnaces from retailers – will force many out of business, decreasing consumer choice in the marketplace and increasing unemployment. This stands in contrast to EPA's first NSPS for woodstoves, promulgated in 1988, which allowed small manufacturers a year to attain compliance³ and staggered effective dates for all other manufacturers.⁴ This year-long compliance timeline was set to explicitly ensure that manufacturers could surmount the financial and logistical challenges to certification.

We urge EPA to follow past precedence and ensure the compliance timeline for warm air furnaces is at least one year in length to give consumers, retailers, and manufacturers the certainty necessary to develop and manufacture compliant furnaces. Thank you for your time and attention to this matter.

Sincerely,

³ See 52 Fed. Reg. at 5,000 (Feb. 18, 1987).

⁴ *Id.* § 60.532 (1990).

James M. Walsh

Jeffrey A. Mordley

Amy Klobuchar

Deirdre Velt

Kelly A. Ayotte

Al Franken

Mary G. Harkin

Lawrence Alexander

Boucar

Paul Manchillo

Janet Shalens

John Thune

Mike Cryer

Gina McCasill

Joe Donnelly

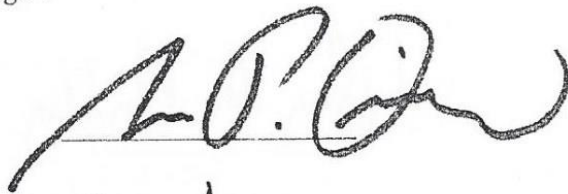
TN-04


Mike Lopez

Brett Guthrie

Vicky Hartzler

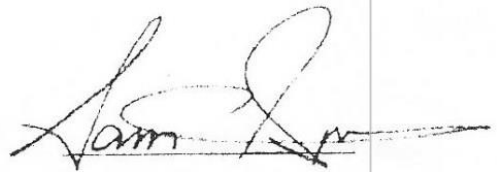
Jim Wages

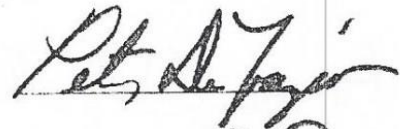


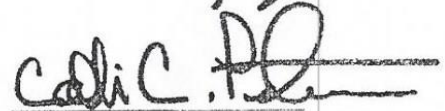


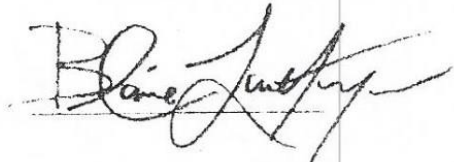












UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 24 2015

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Sessions
United States Senate
Washington, D.C. 20510

Dear Senator Sessions:

Thank you for your letter of November 19, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding updates to the regulations governing new residential wood heaters, including warm air furnaces, proposed on January 3, 2014, and finalized on February 3, 2015. The Administrator asked that I respond on her behalf.

In your letter, you express concerns about the sell-through of warm air furnaces, referred to in our rule as forced air furnaces (FAF), and the effect on manufacturers. We recognize that this is an important issue, and distinct from the wood stoves and hydronic heaters also covered by the proposal.

Throughout this rulemaking we have been very mindful of the potential impacts on small businesses that manufacture these devices. The EPA designed the rule with small businesses and consumers very much in mind. During the proposal process, we convened a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to help inform our proposal, which incorporated numerous recommendations to help reduce potential impacts on small businesses.

On February 3, 2015, the EPA issued the final rule, which will make new residential wood heaters significantly cleaner than currently required. We received about 6000 public comments, including comments on the issues you raise in your letter, and the final rule that takes into account these comments. In particular, the rule provides a 1-2 year transition period for manufacturers of forced air furnaces, to give them additional time before the updated emission standards would apply.

Finally, I want to underscore that the health benefits of these proposed regulations are expected to be substantial and much greater than the costs. For our final rule, we projected annual health benefits of \$3.1 to \$6.9 billion, compared to estimated costs of \$46 million.

Information about the rule is available at <http://www2.epa.gov/residential-wood-heaters>, and we would be happy to provide further information or answer specific questions about the rule if you or your staff request it.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or (202) 564-2998.

Sincerely,

A handwritten signature in dark ink, appearing to read "Janet G. McCabe", with a stylized flourish at the end.

Janet G. McCabe
Acting Assistant Administrator